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# THE BEHRING SEA CONTROVERSY.

BY GEN. B. F. BUTLER AND THE MARQUIS OF LORNE.

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GEN. B. F. BUTLER:

IT IS not a misfortune that, in examining this subject of difference between Great Britain and the United States, we are relieved from going into the musty learning which might be necessary to determine our national rights and our title to property that we claim. For all present use those questions are passed by.

All claims to the lands and waters on this continent have been obtained through the right of discovery and occupation. Through these, more than a hundred years ago, Russia came into possession of the Aleutian Islands and the territory now called Alaska, and exercised exclusive jurisdiction, unquestioned, against all the world, until she transferred her said possessions and appertaining rights thereto, to the United States. Since then and until within the last five years this government has exercised over said possessions jurisdiction substantially the same as that which had been previously exercised and claimed by Russia.

Now, one nation only, Great Britain, sets up an adverse claim, insisting that her subjects under her flag may appropriate, at all seasons of the year, the fur-bearing seals and sea otters, which have their homes on the islands and shores, wherever they may be found while swimming in the sea—not forbearing also to slaughter them on shore. To such action of the Canadian English subjects our government protested and took measures to protect these animals from being thus hunted to their possible extinc-

tion and to our injury. Whereupon her government suggested to our government that these opposing claims of the two nations be submitted to arbitrament to determine the rights of each, by which both nations should abide ; proposing that until those rights were so established both nations should cease hunting the seals, and should send ships to guard the waters in dispute from all vessels violating the claimed rights of either party. They, consequently, entered into an agreement known in diplomacy as a "*modus vivendi*," i. e., a manner of conduct of subjects of both nations in that regard while the contentions were being decided, so that the seals might not be destroyed ; and that *modus* has existed for one sealing season. It now appears beyond dispute that under that *modus*, while United States vessels and English vessels were guarding the waters, many thousand seals were destroyed, more than were ever taken in a single season before ; so that so far as the seals were concerned the *modus* was a misnomer, being in fact a *modus exterminandi*. Our vessels seized four of the poaching schooners, two under the American flag and two under the British flag, and took them to San Francisco, and had them condemned by the courts. The enormous navy of England, which is her pride and her boast, during that year seized two British poaching vessels and took them into her ports, but history does not record any other trouble that happened to them.

The submission by treaty of the rights of the parties to arbitration is a mutual acknowledgment as regards each other to the full extent of the rights claimed by each while the arbitration is pending. And both are bound not to do anything to disturb the claimed rights of either until a decision is reached.

After delays in relation to the details of the arbitration, of which neither party complains, the treaty establishing it was concluded in due form by England, was signed by President Harrison and was by him submitted to the Senate.

Supposing that nothing stood in the way of the ratification of the treaty, the President addressed a note to Lord Salisbury, asking that the *modus vivendi* should be continued during the pendency of the arbitration, and stating the necessity of both nations very early taking the seals in charge, because some forty-seven vessels had sailed from Canadian ports for the purpose of catching the seals at an earlier day and in a larger number than ever before ; so that, in his belief, there was danger of

the destruction of the seals, as the larger portion of the catch was of the female seal in the water on its way to our islands and shores to its breeding haunts.

To that note the British premier made answer, that he did not propose to renew the *modus vivendi* during the time of the arbitration, because that time was likely to cover the sealing season of 1893, and as the Canadian poachers had expended a great deal of capital in fitting out their vessels, if they failed to catch seals enough to make the enterprise profitable, they would be damaged. His Lordship was apparently unmindful of the fact that, if the arbitration went on long enough, all the seals might be destroyed, and that when the arbitrators found in favor of the United States there would be no property on which the award could operate, and so the trouble and expense of the arbitration would be thrown away.

Let us illustrate his Lordship's proposition. It may, perhaps, be well done in this way: A had a fine and profitable piece of timber land, inherited from his ancestors, to which nobody had made any claim within the memory of man. Suddenly his neighbor B claims the right to cut the wood and timber off that land, and makes that claim in the form of chopping it down and taking it away. A tries to stop him in this unneighborly work of devastation. B, asserting his rights, says, "I will submit our respective rights to this property to arbitration," B being a litigious fellow. A, not wanting a lawsuit, says, "Agreed; let us arbitrate, but in the meantime let us so arrange it that nobody shall cut any of the trees during the arbitration." While the formalities of making out the form of arbitrament are going on, both mutually agree to help watch the woodchoppers so that the trees may be spared. The arbitration being concluded upon, A says to B: "Let us continue to watch the woodchoppers until the award is made." "Oh, no!" says B, "my woodchoppers have put themselves to great expense in providing the tools with which to cut down the timber, and teams to haul it away, and they will lose their investment of capital if they do not go on cutting and taking the timber. Therefore, I am going to aid them all I can in their operations."

What would be said of such a transaction in ordinary life and such conduct between man and man?

But Lord Salisbury's proposition does not stop there even.

He says : "Let my choppers go on and cut all the wood they can ; you find out the names of those who do it, if you can, and take the bond of each of them, so that they may pay the damage." Now, then, if such action was taken by B against A, and he should go to his friends and say, "What ought to be done to a man who has treated me like that ?" would not the reply of his friends be, "If he does not apologize for his insulting proposition, and behave himself, whip him like a dog, if you can ; whether you can or not, it is due to your manhood and self-respect to try ?" Would not the just judgment of all men sanction such a course ?

Leaving our illustration and returning to the case under consideration :

What President Harrison did do was, to reply to Lord Salisbury, in proper phrase, that he should maintain the dignity and honor of his country and her national rights by protecting those and her property with all the resources within his power. *Nothing more.*

For that he has been severely and wantonly criticised by all the anglophobists and anglophilists in the country. Their cry is : "Such language will bring on a war with England. Would he have a war for a few seals ?" No, nor many, nor for almost any amount of money that could be named, but we should have a war, if our wrongs can be rectified in no other way, for one seal or for one dollar, if the attempt is to force it from the United States by insult, contumely, and disregard of our honor and high place among the nations of the earth. And the united press of England added to these cries the aspersions on our President that he was compelled to this proposition, to sustain the honor and dignity of our country, by his desire to be re-elected to his high office, and that he acted upon that ignoble and selfish motive only. Such accusations as to the motives of our highest officer and of our ruler in foreign affairs are a gross, national insult of the vilest sort, and are indeed more provocative of war than could be the loss of the largest sum of money. This is not the first time we have suffered such insults from Great Britain, and that in the person of her high officer ; it was duly resented then, as I hope may ever be the case.

Because of similar accusations made by Mr. West, the British Minister, in a private letter, that President Cleveland was actuated

by such political motives in some of his official acts, which letter was published by the recipient without the knowledge of Minister West, President Cleveland, deeming it a British insult, made representations of the matter to the British Government and asked that West be recalled, and that Government advised President Cleveland to send him home. This the President did, "without standing on the order of his going."

Before going farther, let me declare my opinion and most firm belief that a war between this country and Great Britain is impossible, because England could not be well provoked by anything that our sense of justice, our honor as a nation, and the high position we hold, would permit us to do, or allow to be done, towards any nation.

Let us see what is England's condition as regards a war with us. I admit she has a large and powerful navy on which she relies to threaten us with the piratical warfare of bombarding our cities, destroying our property, and murdering our women and children. No other nation in the world threatens to carry on a war in that way except against barbarians.

England knows that she could not land men on this continent who could stay here seven days. She did manage in the War of 1812 to land a flying party near Baltimore, which marched to Washington and destroyed our public buildings.

During all the wars of Europe, even under Napoleon, wherein quite all its capitals were occupied by invading armies, no such act of vandalism was done, and as soon as the English had done it in our case the incendiaries fled to their ships. Even Moscow was set on fire by the Russians themselves to prevent its falling into the hands of Napoleon and affording him the additional prestige that he would gain by occupying it as his winter quarters.

*Great Britain is not a warlike people.* She never had more than twenty-five thousand soldiers from her own islands between the four seas on any battlefield, and those were at Waterloo, while we had in our late war more than that number to starve or die of wounds or sickness in a single prison. Does any one believe that England will ever forget that at the close of our war we disbanded quite two millions of soldiers, and that half a million of them are yet alive to take a hand in any war in which the honor of our country is assailed by Great Britain? I have said, and perhaps may be criticised for it, that she is not a warlike

nation. Her government is continually making war on small nations and hiring someone else to do the fighting.

If there is anything on which England can pride herself for prowess in war it is her navy. But she cannot forget that, until almost within this generation, that navy could only be supplied with sailors sufficient to man it by dragging them from their homes by press gangs. The Marquis of Salisbury seems to have faith in bonds in settling difficulties between England and this country. Be it so. England has given this country bonds in untold millions that she will keep the peace and be of good behavior. The first gun fired in the Behring Sea by one of her war vessels against one of our war vessels would be war, as much as the first gun fired at Fort Sumter or as the Battle of Gettysburg. War abrogates all treaties of amity and commerce. War permits the confiscation of all property of one belligerent found on the shores or within the jurisdiction of the other. Every debt, demand, certificate of stock, due from an American would be at once forfeited and confiscated. Every rood of our land owned by English syndicates or subjects would be lost to her. It would seem as if we could find the means to carry on the war by selling her property in open market, and using the proceeds ; and when we hear the shells from her fleet, if we should do so, breaking the plate glass in Broadway, we should be comfortably remembering that a great deal of it belongs to English people.

Stopping the export of cotton for three months would starve Manchester and its workmen, and be of advantage to us, as cotton is very low in price and we could use it.

Let us look at some other foreign complications which are to be taken into account by England in case of war with us. Russia still has her eye on Constantinople, and might think it a good time, when England was thus crippled, to carry out her dream of empire so long and steadily maintained by her Czars. She might be deterred from entering on her purpose lest she should disturb the peace of Europe. But India lies at Russia's very door with every road opening into it, and the possession of her wheat fields would give her command of the sustenance of the Eastern Hemisphere, at a time when the superabundance of corn and wheat from the valleys of the Red River of the North and the fields of Manitoba, which now fill fifteen thousand freight cars yearly, and which pass over the Canadian railways, would be blocked by

the American forces. England, indeed, would not doubt that upon land we are her superiors.

In a war by sea she must suffer far more than we. She has substantially the carrying-trade of the world, reckoning what she robbed from us during the War of the Rebellion by the aid of the rebel cruisers which she sent from her ports, and for the doing of which she humbly expressed her regrets in the most formal manner in the treaty at Washington as a preliminary to be allowed to treat with us, as follows :

“And whereas Her Britannic Majesty has authorized her high commissioners and plenipotentiaries to express, in a friendly spirit, the regret felt by Her Majesty’s Government for the escape, under whatever circumstances, of the “Alabama” and other vessels from British ports, and for the depredations committed by those vessels :

“Now, in order to remove and adjust all complaints and claims on the part of the United States,” etc.

Our letters of marque and reprisal (for we did not agree to the treaty of Paris, which England pressed us to adopt at the beginning of our Civil War and which put privateering under the ban of international law) would swarm out of every port, and sweep her commerce from the ocean. One thing is certain : If our ships are not as heavy as hers, they are swifter and lighter heeled, which her commercial marine would find out to its cost.

These are a few of the reasons why I cannot conceive that we can ever have a war with England ; and because, also, we shall never demand anything of her but what we believe to be right, nor submit to anything from her which we believe to be wrong.

Much criticism has been expended upon President Harrison because of the honest, manly, firm, and unflinching declaration that no interference with our rights would be permitted while our case was being tried. This was called “Jingoism,” and it was said that it was only done by him for selfish political purposes. The change of a single word in all that makes it high praise. It was manfully done for the *politic* purpose to maintain the honor and dignity of the country. And it has succeeded, as in the history of our diplomacy such manful presentation of our rights has always done. Let us recall to the mind of this generation that when we have had great men for Presidents, our rights have always been thus presented to every nation which has undertaken to baffle



us by neglect, or through adroit diplomacy to postpone a fulfilment of treaty engagements.

Let us call to mind the French Spoliation claims, which had been recognized by France for more than twenty-five years before she would make a treaty to pay them, whereby those of our citizens who had been despoiled by her continuous neglect went down to their graves in poverty and distress. By treaty the French nation had promised to pay the money in yearly instalments, but neglected to answer the draft of President Jackson's Secretary of the Treasury when presented on the 23d of March, 1834, to the French Minister of Finance, who declared that no money had been appropriated for the American indemnity, and that it could not be paid.

What said President Jackson, without further diplomacy, in his message to Congress on this state of affairs? He sent a message to Congress which gave no uncertain sound. He said: "It is a principle of international law that when one nation refuses to pay a just debt, the aggrieved nation may 'seize on the property' belonging to the citizens of the defaulting nation. If, therefore, France does not pay the money at the next session of the Chambers, the United States ought to delay no longer to take by force what it can not get by negotiation." Nay, more. "Since France," said the President, "in violation of the pledges given through her minister here, has delayed her final action so long that her decision will not probably be known in time to be communicated to this Congress, I recommend that a law be passed authorizing reprisals upon French property in case provisions shall not be made for the payment of the debt at the approaching session of the French Chambers."

How was this received by the French newspapers?

"With one voice, the French newspapers, ministerial, opposition, and neutral, denounced the message as an insult to France, so gross that it would be infamy not to resent it."

The French Minister at Washington was recalled, and our Minister at Paris, Mr. Livingston, was informed that his passports were at his disposal. The President wrote to Mr. Livingston to demand his passports and come home if the Chamber of Deputies, then in session, did not appropriate the money. Congress did not sustain President Jackson. There were cowards in Congress at that day, especially in the Senate, as there have

been since. On the 14th of January the Senate resolved, without one dissenting vote : “ That it is inexpedient, at present, to adopt any legislative measures in regard to the state of affairs between the United States and France.”

Similar resolutions were introduced in the House, but their passage was prevented only because of technical objections. This action of Congress encouraged the Chamber of Deputies, so that it passed a bill appropriating the money to pay the instalments due, but added a condition which forbade the ministry to pay the instalment until the President had apologized for the language which he had used theretofore, and the minister drew up a form of apology for Jackson to sign. Our Congress adjourned without giving the President any money to protect the honor of the country. The President demanded of the French Government its *final* determination ; and if the instalments were not paid the *chargé d'affaires* was to close the office of the legation.

After the answer was received, France prepared its army and a navy to act against the United States. Jackson sent his message to Congress, in which he said : “ If this array of military force be really designed to affect the action of the government and people of the United States on the questions now pending between the two nations, then indeed would it be dishonorable to pause a moment on the alternative which such a state of affairs should present to us. Come what may, the explanation which France demands can never be accorded ; and no armament however powerful and imposing at a distance or on our coast, will, I trust, deter us from discharging the high duties we owe to our constituents, to our national character, and to the world.”

After this message the people rallied around Jackson. They had stood by him from the first. He was only deserted by the sneaks and the politicians. We had one statesman—and he became a President of the United States—in the House of Representatives ; and he made a speech which carried that House in support of the honor of the nation. “ Sir,” exclaimed Mr. Adams, “ this treaty has been ratified on both sides of the ocean ; it has received the sign manual of the Sovereign of France, through his Imperial Majesty’s principal Minister of State ; it has been ratified by the Senate of this republic ; it has been sanctioned by Almighty God ; and still we are told in a voice

potential, in the other wing of this Capitol, that the arrogance of France—nay, sir, not of France, but of her Chamber of Deputies—the insolence of the French Chambers, must be submitted to, and we must come down to the lower degradation of reopening negotiations to attain that which has already been acknowledged to be our due. Sir, is this a specimen of your boasted chivalry? Is this an evidence of the existence of that heroic valor which has so often led our army on to glory and immortality? Reopen negotiations, sir, with France? Do it, and soon you will find your flag insulted, dishonored, and trodden in the dust by the pigmy States of Asia and Africa—by the very banditti of the earth.”

From France came a proposition three weeks later. The President informed Congress that the government of Great Britain had offered its mediation, and that he had accepted its offer. But at the same time he notified the mediating power that “*the apology demanded by France was totally out of the question.*” On May 10 he sent the following communication to the Capitol: “Information has been received at the Treasury Department that the four instalments under our treaty with France *have been paid to the agents of the United States.*” And when this was done Jackson was applauded with the same unanimity as that with which he had been attacked for his conduct in the French affair. This is one specimen of American “Jingoism. *It has always been successful.*”

We may be replied to by some gentlemen who wear whiskers of a particular pattern that this demand was not on England; that the country opposed to us was France.

Let me give another instance. During our War of the Rebellion, in the summer of 1863, when the English shipyards were building armed vessels, and the English Government allowing them to escape from their ports, to destroy our commerce and burn our whaling fleet in the far-off oceans, this Government remonstrated with England on such conduct for more than two years as a breach of neutrality and as wilfully affording aid and comfort to our enemy. Our minister was instructed to present in the strongest language this unfriendliness and injustice to us. Meanwhile two ironclad rams were being built at the Laird shipyards, under pretence that one was for Egypt and the other for France. But it was known to our government that they were intended to come

on to our coast to destroy our blockading fleet, or to raise the siege of Charleston. If that were done the English blockade runners would carry on British trade at a profit, just as the Canadian poachers can now steal seals at a profit.

At last, after our minister had exhausted all power of reasoning and remonstrance with Lord John Russell, the British premier, to have these rams interdicted by Britain from leaving the port of Liverpool, and Mr. Adams had reported that he could do nothing to have these rams kept in England, it was currently reported here that at a cabinet consultation President Lincoln took his pencil and wrote on a visiting card directed to Mr. Adams: "Tell Lord John Russell that another 'Alabama' is war." On September 5, 1863, although Mr. Adams had never before even hinted anything about the acts of England being war, in accordance with Mr. Seward's despatch of July 11, 1863, Mr. Adams says to Lord John Russell, after calling his lordship's attention to what was proposed to be done by these rams so escaping: "It would be superfluous to point out to Your Lordship that *this is war*." Three days afterwards he received the following despatch: "Lord Russell presents his compliments to Mr. Adams, and has the honor to inform him that instructions have been issued which will prevent the departure of the two iron-clad vessels from Liverpool." *So no more "Alabamas."*

Manly diplomacy once more succeeds, and against England, too, when she was stronger and we were weaker than either will ever happen to be again. It destroyed her favorite project of sweeping our commerce from the seas by means of rebel privateers sailing from her ports, which she had schemed for since May, 1861, when she had offered to Jeff. Davis to adopt the treaty of Paris. She urged our Government also to accept this measure, which forbade privateering, pledging to Davis that it should not apply to his rebel privateers, concealing from our Government and its diplomatic corps that she was in diplomatic correspondence with the rebel chief as a belligerent, before we had acknowledged such belligerency.

It has been difficult to deal in this paper with the status of the Behring Sea controversy, because, as I have been writing, the two governments were acting upon it by telegraph. One day war seemed to threaten, and almost the next the treaty was to be ratified. On one day Earl Salisbury is in an aggressive attitude ;

he receives the bold presentation of our ultimatum ; he replies to it at first adversely and defiantly, and, to speak plainly, insultingly, because he proposes to change the negotiation on our part to one with Canadian seal poachers to get their bonds to pay the damages for which we hold England responsible. The President's answer to that, is to reiterate his ultimatum that the *modus vivendi* must be maintained during the arbitration, or we will defend and protect ourselves at all hazards and with all our resources. The next day the Earl Salisbury sends a note receding from his position, which he discloses to Parliament and receives cheers for so doing. The Senate of the United States at once, as well they might have done before, ratified the treaty unanimously, and the arbitration is to go on, the seals are to be guarded by both nations, and the Canadian seal poachers are to be arrested, and all things are to remain *in statu quo* until the award of the arbitrators. The views of our contentions change as suddenly as the scenes of a kaleidoscope ; not, however, with any of their beauty.

The treaty providing for the arbitration ought to have been ratified because our government had agreed so to do. Nations as well as individuals should fully and thoroughly carry out every contract, however informally concluded. I have not said and do not say, because I do not believe, that the arbitration should have ever been originally agreed upon.

In almost every instance where we have had an arbitration with Great Britain we have got the worst of it. Space will only allow me to give one or two instances of this fact. In the matter of our "national losses" because of the misconduct of England in our Civil War an arbitrament established by the treaty of Washington was held at Geneva. When we presented our case before the arbitrators, England refused to go on with the hearing until we would abandon all our claims to national losses (such as having our commerce destroyed, our war prolonged, and its expenses largely increased), and demanded that they should be withdrawn from the consideration of that tribunal, and that the United States confine its case to claims of its private citizens for injuries done to them, and we were not allowed to present even our claim for the sinking of the public warship "Hatteras" by the pirate "Alabama," for whose escape from England, under whatever circumstances, England had expressed her regret, as we have seen. Our government was weak enough to agree to withdraw our national

claims, "and present only the losses suffered by our citizens" as national losses. It is true the arbitration gave us some fifteen and a half millions without interest for all that this nation suffered at the hands of England during the war. Who got the worst of it by this arbitration?

There was another arbitration provided for in the treaty of Washington. England made claims against us for the value of the fish our fishermen on the northeast coast had caught, certain mackerel swimming in the sea within three miles of the Canadian shores. We agreed to arbitrate that claim with England, to be submitted to three men, one appointed by us, one by England, and one to be agreed on by the parties, or else appointed by some foreign power, the award of whom, that is, all three agreeing to it, was to be binding on the parties. England chose a very able gentleman from Canada; we appointed a gentleman from Massachusetts, a country lawyer who had probably never seen a mackerel until it was boiled; and England proposed the name of Del Fosse, who represented Belgium here. But Mr. Fish would not agree to him because Belgium was substantially only a province of England. Whereupon the appointment had to be submitted to the representative of Austria at London, and he very promptly nominated Del Fosse. The arbitrators met, the case was heard; Del Fosse and the Canadian arbitrator being a majority awarded the sum of five million five hundred thousand dollars, something like one-third of all that had been awarded us by the Geneva tribunal for all the losses we had suffered through the misconduct of England during the war. And although the award was not agreed to or signed by our arbitrator, through the performances of our Secretary of State under Johnson this money was paid for a few fish swimming in the sea in the northern waters of Canada, the right to catch which we had enjoyed as Colonists; and in the treaty of peace of 1783 these rights were secured to us by the War of the Revolution, by the manly courage of John Adams, who declared that he would allow the war to go on rather than surrender the right, which was clearly ours, to fish in the seas.

Now, by this arbitration, a majority of the arbitrators of our rights in the Behring Sea are to be chosen by England and other European powers (she has been careful this time), and the treaty provides that the award of the majority is to be binding. The English newspapers are early in discussing as to whom the Euro-

pean countries (who, with England, are to appoint such majority of arbitrators) will appoint, and they congratulate themselves that England is safe. I agree with them. *She is safe*. And I therefore say that the arbitration ought not to have been made.

The arbitrament was proposed by England.

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B. F. BUTLER.

#### THE MARQUIS OF LORNE:

A STRANGE North land, a weird North water is that Alaskan region, that part of the Pacific called the Behring Sea, on the American side; a main land rising into vast plateaux and cones, and furrowed for the passage of streams, great even when measured by the wide scale of America; a giant limit of the mountain chains that wall off the Pacific along all its Eastern side, save in the low-lying centre part near Panama, and here, in the far north, broken away into hundreds of islands, large and small, from the great breakwater of Vancouver, to the lonely rock inhabited only by puffins and gulls. Wide as is the Archipelago along the British Columbian shore, it still sows the Alaskan water with all imaginable shapes in a still formidable multitude of isles, and then threads away into the long string which shows that in other days a chain of hills ran out towards Asia. Now only the broken fragments show like a ruined and submerged rampart, and in front of them is a mighty force—a deep trench in the ocean flow, as though it had been dug to make unscalable the rocky walls of the primeval ruin. It is these far-away retreats which are the best loved by hunted seals, about whom so much is now written. If we could only persuade American and British ladies to let these seals have a *modus vivendi*, or chance of life, for a few years, how grateful they would be; but as this involves the buying of no new seal jackets for at least two or three years, what hope is there for them? Yes; if President and Prime Minister are now discussing with earnestness how to preserve the existence of the seals, it is a case again of “*cherchez la femme* ;” for the pursuit of these seals is a profitable business, and nobody likes to drop it.

The company which has the sole right of killing seals on land has its men ever ready to watch them as they land, and to cut off their retreat to the sea as they are comfortably dozing on the

rocks, and drive them inland to the slaughter ground, where they club them to death.

The so-called "pelajee," or ocean hunter, intercepts the seals on their way to the islands, and in fog and wet kills them in the water. Dreary-looking places the breeding grounds are, for there is not a single tree to be seen on these rocky masses lifted out of the gray sea. A white fog constantly broods around them, and the air is so moist that in the winter, when there is any frost, each rock face on a hillside is seamed like a comb with icicles. This dampness produces the only beauty in their coloring, for the grass is often long and very green. The Indians are an ugly race, but have skill in fishing, and have long ago learned the value of furs, and the use of guns and nets.

One of the ablest of American statesmen is said to have remarked to an English friend: "Sir, whenever the British government has had any difference with foreign countries, it has been observed that opinion here at Washington is on the British side. Yes, sir, we are always with you, except, curiously enough, in the event of any dispute between ourselves and you!" It may be doubted, in the matter of the Behring Sea contention, whether even this exception holds good. There can be very little doubt that the vast majority of American citizens believe, and, we may add, every distinguished lawyer in the United States backs the opinion, that there can be no warrant for the barring of the open sea, and for the exclusive power of fishing or of hunting therein.

When Russia made over to the American government her territory opposite Siberia, Uncle Sam made an investment which a Scotsman would have called "buying a pig in a poke." Something was bought with something else inside of it, and that was about all that was accurately known of the transaction.

To be sure there were maps, with a bewildering number of islands and "shadowy promontories" marked upon them, and it was also obvious that these studded a sea giving access to that mysterious Arctic Ocean, which each nation in turn burns to enter with a view of reaching the North Pole. But it was not, it is believed, with a view to the exclusive possession of the highway to that magnetic attraction that the United States invested its dollars. Information was rather vague as to the region purchased. It was painted to the imagination as most interesting. Its fogs were very clearly described, and it was known to have a



fair amount of winter, snow, and frost, although these advantages failed when compared with the rival attractions in the same line enjoyed by New England. But volcanoes formed an entirely novel acquisition for Uncle Sam. He had never enjoyed the possession of a real live mountain before. He, therefore, now put several into his pocket, with a sensation that the Monroe doctrine had at last led to something real. Then there were glaciers also, and this rather roused the spirit of local protection among the producers and consumers of Wenham ice. But it was agreed that, although the purchase of so much waste land and water, peopled only by a few Indians and a selection of Russian half-breeds, would not return any dividends, the acquisition was interesting. And it has, at all events, produced one of those small but irritating contentions which will always arise where commercial companies employ their fishermen or hunters in the chase.

Scientific interest as well as commercial gain has stimulated the attention paid to the hunting in the North Pacific—for the sea otter, the sea lion, and the fur seal are creatures only found to-day in large numbers in these regions.

On the Atlantic there has been for many years so indiscriminate and imprudent a slaughter of walrus, seal, and salmon, as well as of other fish, that all hope of re-stocking the walrus and seal haunts near the coasts has disappeared; and the efforts of scientists are busily occupied with attempts to re-stock the rivers with salmon and even the sea banks with valuable sea fish.

It is probably this fact which has led American scientists to lay in some instances an undue stress on the chances that the fur seal may be exterminated. Certainly the fur seals have disappeared from the shores of the Southern Hemisphere, where they were formerly to be found in abundance. In the Southern Pacific there was no "catch" of seals taken at sea. They were slaughtered only on the islands and shores where they formed their "rookeries." It was the slaughter made in these places, where they were comparatively helpless, that caused them to disappear. The experience of the South will certainly be repeated in the North were the same tactics to be employed. Indeed, the ease with which the animals can be taken on land has induced Russians and Americans to endeavor to monopolize the profits by allowing the seals to be caught on the islands only. The fishing proper has been done by schooners, the number of which has only

this year reached fifty, in which the seal is pursued in the open sea, that is, more than three miles from shore when off the American coasts. It is obvious that the means of destruction used on this limited scale are wholly insufficient to work much damage to the herds on their way to the islands. Once on the islands and their immediate neighborhood, the preservation or destruction of the herds depends solely on the regulations under which the American Company, the lessee of the islands from the Government, conducts its operations.

It is natural that, with the lessons of destruction of life seen on the Atlantic side, the scientists should be inclined to support the interested representations of the monopolists connected with the American Company in deprecating any chase of the seal at sea. But it will be apparent that, whereas on the Atlantic the instruments of destruction have been used for generations, the machinery for fishing and for the chase is so feeble on the Pacific side that this fear is groundless and cannot apply to the case.

It is the interest and desire of all parties having, or likely to have, a share in valuable animal life to preserve it according to the light of scientific knowledge,—for, as the farmer says, the amount of “cropping must depend on the quality of the soil.”

Dr. Dawson, who, with Sir George Baden Powell, examined the Behring Sea, and all the fishermen who could give pertinent evidence, declare in the strongest terms that the present sealer outfit is not sufficient to hurt the herds for another year, at all events. They have come to this conclusion after much trouble and much travel, and Dr. Dawson's testimony is evidence that will be held in respect by all American scientists.

But what was not expected has happened in that the fisheries turn out to be likely of infinitely greater value than the most hopeful imagined. The codfish appear to be the same as our old friends of the Atlantic; although the salmon are all widely different in look from their Atlantic cousin, and, as most people think, very inferior in flavor. There seems, however, to be no inferiority in the cod, and the banks on which they are found are nearly equal in extent to those around Newfoundland. They may be larger, for they are not yet fully surveyed, but it is computed that there are 100,000 square miles of fishing ground.

Of course, if the sea were not an open sea, all this cod fishery

might also be given off to some one company with monopoly rights. Nobody doubts that seals landing on islands or mainland shores, or swimming in water within the three-mile limit of the coast, are the property of the landowners, but away at sea there can be no more property in them than in the salmon which come regularly to certain rivers and then become landowners' property, but are anybody's game when on their way to the rivers and out at sea. This has been on other occasions insisted on by American jurists.

Mr. Adams, of the United States, in 1822 wrote: "The pretensions of the Russian (Imperial) Government extend to an exclusive territorial jurisdiction from the 45th degree of north latitude on the Asiatic coast to the latitude of 51 north on the west coast of the American continent, and they assume the right of interdicting the navigation and the fishing of all other nations to the extent of one hundred miles from the whole of the coast. *The United States can admit no part of these claims.*"

A little later Mr. Adams again said: "The right of navigation and of fishing in the Pacific Ocean, even upon the Asiatic coast north of latitude 45 degrees, can as little be interdicted to the United States as that of traffic with the natives of North America." President Angell, a great American authority, says: "On what grounds, and after what modern precedent, we (the United States) could set up a claim to hold this great sea, with its wide approaches, as a 'mare clausum,' it is not easy to see." Again he says: "Our government has never formally set up the claim that it is a closed sea. Governor Boutwell in 1872 said: 'I do not see that the United States could have the jurisdiction or power to drive off parties going up there for that purpose, unless they made such attempt within a marine league of the shore.'" He rightly concludes in reference to the preservation of the seals: "It cannot be difficult to make some satisfactory adjustment of this question." Professor Geffcken, of Germany, a most able and impartial critic, takes precisely the same view.

British seamen in the last century hunted and fished in Behring Sea. The right was insisted on by Great Britain in the convention made with Russia in 1825 in connection with matters affecting this very sea. The first article declared: "It is agreed that the respective subjects of the high contracting parties shall not be troubled or molested in any part of the ocean called the

Pacific Ocean, either in navigating the same, in fishing therein, or in landing at such parts of the coast as shall not have been already occupied." Great Britain always declared that the Pacific Ocean embraced Behring Sea, and that Russia could not close it. And in 1887, an American Government official, in contending that the seizure by Russia of an American vessel was illegal, notes that "the Russian code of prize law of 1869 limits the jurisdictional waters of Russia to three miles from the shore."

Neither Britain nor any other maritime nation could have recognized any monopoly in any sea beyond the three-mile limit. The Russian company's monopoly could only extend to the land and its immediate neighborhood, and that was quite sufficiently valuable, specially as to the seal-fur trade, to make the highest in Russia, whether by rank or fortune, eager to become shareholders in so lucrative an enterprise. In early days, too, the competition there was not keen, and the mere absence of fishing and sealing vessels cannot, of course, be held to imply that they came not because they were forbidden to do so. They came not, because they knew not of the value of the harvest they might gather. The way was long to the field, and there were no ready markets at hand.

Wide salt water has always been open to all keels, and no imaginary claims of exclusion, derived from half barbarous times, can invalidate this world-wide freedom, which it is equally to the advantage of all maritime nations to enjoy.

Likewise good regulations as to close times should be mutually arranged, so that the supply of fish or sea animals be not exhausted. Now it is absolutely denied on the strongest evidence that any "rookery" or seal colony has ever been destroyed, depleted, or even injured, by the killing of seals at sea only, whereas it is proved that the heavy slaughter on the land where the seals congregate has caused the seals to vanish from several places where they formerly were to be found in thousands. It stands to reason that a moderate use of both methods of hunting is what ought to be enforced. Just as the oyster supply dredged up by the fishermen is regulated at the ancient British Burgh of Whitstable by the state of the market, so ought international arrangements to be made to check any over-heavy draft on the vitality of the seal herds, as observed from year to year.

During last year eye-witnesses of the highest character have

declared that the seals are abundant, and that there is no necessity that a fair number should not be taken, both from the islands and from the ocean. The arbitration of this year will enable the governments concerned to make regulations for future years, which shall put each neighbor on the Pacific in a position to use wisely and with a view to future profit the annual migration of the seal herds.

It is well to remember that the only debatable point which delayed the ratification of the Arbitration Treaty by the Senate is a very small one, and refers only to the single season's hunting by no great number of vessels. While men of indubitable probity declare that this cannot injure a property, the value of which consists chiefly in a right, which cannot be assailed, to catch the seals on shore, it seems unnecessary to have any further delay in concluding the reference to arbitration. This arbitration will decide the more important matter of the right of a maritime power to close any portion of the ocean to the citizens of other nations. Some complaints of delay have arisen on both sides, but it is certain that the British have expedited the correspondence as far as practicable, and it is, indeed, only natural that both sides should desire the settlement of a question which cannot be said to involve the permanent national interests of either party. The United States believes that it purchased certain rights from the Russians. These are only in part questioned by those who fully admit all rights as to land ownership, but object only to be deprived of that which not only the British, but all other maritime people, claim as common property, namely, the right to hunt at will over the unenclosed length and breadth of the ocean itself.

When the arbitration has done its work the seal-fishing industry must be protected by a sensible close time, giving the subjects of the United States and Britain each the power to use and not to abuse the advantages given by the northern migration of the fur seal. It is incompatible with any international comity that one power alone can patrol the open sea. Other nations—Russia, France, Germany, or any that may be named—have a right to the navigation of these waters, and it is primarily in the interest of the powers having harbors in the more immediate neighborhood that provision should be mutually made for the preservation of the seal species, not by the dragging in of ancient

alleged Russian exclusive privileges, but by the sensible delimitation of seasons for hunting, based on scientific investigation, which shall be impartial and founded on painstaking observation and practical experience. The fair solution of this matter is the extension of the principle of arbitration already agreed on, so that compensation shall be given for any property taken in contrariety to the ultimate award of the arbitrators on either side, and the future determination to avoid that waste which would injure alike the subjects of the London and the Washington governments.

LORNE.